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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO: 86-250

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

STATE OF ALABAMA,

PETITIONER

VS.

HARRY PEOPLES,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES ELEVENTH
CIRCUIT COURT OF APPEALS

BRIEF IN OPPOSITION FOR THE RESPONDENT

MARGARET L. GIVHAN,
ATTORNEY FOR RESPONDENT

COUNSEL OF RECORD:
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QUESTION PRESENTED

I.

Did the Eleventh Circuit Court of Appeals err in holding that Strickland v. Washington, 446 U.S. 668 (1984), requires the granting of the habeas corpus writ petitioned for in this case?

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REASONS FOR NOT GRANTING THE WRIT

A. THE UNITED STATES ELEVENTH CIRCUIT COURT OF APPEALS DETERMINED CORRECTLY THAT THE RESPONDENT HAD MET THE TWO PRONG TEST OF WASHINGTON V. STRICKLAND WHEN APPELLATE COUNSEL FAILED TO ADVISE CLIENT OF THE MANDATORY APPLICATION OF THE HABITUAL OFFENDER STATUTE, WHICH LED TO THE RESPONDENT'S RESENTENCING TO FROM 20 YEARS TO LIFE.

The Attorney General, Petitioner, in this Petition, alluded to a novel interpretation of the decision in Strickland whereby he implies that ineffective assistance of counsel may only apply to professional error at the "guilt phase, or death sentencing phase" of court proceedings, which if agreed, would preclude professional errors at the appellate level. Since this particular case deals with professional errors at the appellate level, then the instant case can be distinguished from Strickland.

Respondent does not agree with this interpretation and asserts that Strickland specifically refers to "proceedings" (466 U.S. at 694), and does not narrow the parameters to only the guilt phase, or death sentencing phase , as were the facts at issue in Strickland. Repsondent contends that the Eleventh Circuit Court of Appeals correctly applied the Strickland standards for ineffective assistance of counsel for errors made

on the appellate level. To advocate that there are different set of standards for ineffective assistance of counsel at the guilt phase level and another set for attorneys taking appeals would not be consistant with fundamental fairness.

The Court of Appeals for the Eleventh Circuit was quite methodical in tracking the standards or two prong test as set out in Strickland, and concluded that, but for the errors of the appellate counsel, the sentence would have remained 20 years rather that life. Respondent is certain that that there is no question that imposition of a life sentence is more severe that imposition of a 20 year sentence. That if one received a more severe sentence because of the negligence of the attorney, it can not be argued that the client was not prejudiced in a legal sense.

In the unanimous opinion below, the Circuit Court noted that the error in the first sentencing would not have come to the attention of the Alabama Court of Criminal Appeals, if the appeal had not been pursued. The defendant was owed a duty by his attorney, to at least know that the case was on appeal, what issues were at stake, what risks were there, the applicable law, so the defendent could makean informed decision whether to proceed with the appeal at all. The Appellate Attorney had a duty to the defendant to inform him of the law and advise him of any risks or pitfalls in pursuing a no-merit appeal so that the defendant could at least make an informed decision to drop the appeal or pursue the appeal. Appointed counsel are not agents for the state, they are the personal confidential advisors to the appointee whether he be black or white, male or female, good or bad. We would have a very warped since of justice, if we shall

condone professional errors because they recitify the state's mistakes in applying a law. Our country is not a nation whereby we allow the ends to justify the means.

Since the Court of Criminal Appeals of Alabama did not sua sponte review all sentences to check on the application of the mandatory law, and since the respondent through his attorney brought the case to the attention of the appellate court for scrutiny, fundamental unfairness occurred when respondent was resentenced to a substantially increased term without any knowlege of the pitfalls or risks concommitant in taking the appeal, without advise from his attorney , when the law in Alabama on the mandatory nature of the Habitual Offender Act was settled.

The Strickland test was met in that there were several cases which interpretated the law as being mandatory in its application and not discretionary as thought by appellate counsel. Watson v. State, 392 So.2d 1274 (Ala. Crim. App.1980), Holley v State, 397 So. 2nd 211, 215 (Ala. Crim. App. 1981). Alpin v. Statee, 421 So.2d 1299 (Ala. Crim App. 1981). The statute clearly sets out the application to be mandatory nature. Section 13 A-5-9, Code of Alabama, 1975. .

The Eleventh Circuit unanimously concluded that because there was enough case law and statute interpretation for appellate counsel to be aware of the mandatory nature of the HOA, taking a no merit appeal on issues not preserved at trial level, together with no communication with the client about facts and law affecting the appeal, did not meet the 6th amendment standards for effective assistance of counsel as set out in Strickland.

The instant decision is the accurate interpretation of Strickland, and should be upheld. It turned on its own unique and pecular set of facts which would have little effect on but a few other than this set of litigants.

CONCLUSIONS

This Court should refuse to grant a writ of certiorari to the Court of Appeals of the Eleventh Circuit, as it is manifest from the facts at issue and the case law cited, that Respondent was substantially prejudiced by errors of commission and omission of Appellate Counsel, and that fundamental unfairness resulted in a greatly enhanced resentence.

Respectfully submitted,

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NO: _____

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GEORGE BOWEN, WARDEN, AND
THE ATTORNEY GENERAL OF ALABAMA,

PETITIONERS

VS.

HARRY PEOPLES,

RESPONDENT

A F F I D A V I T

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

Before me, the undersigned Notary Public for the State of Alabama at large, personally appeared Margaret L. Givhan, who is known to me and who, being duly sworn, states as follows:

1. I am a member of the bar of the United States Supreme Court and am the attorney representing the respondent, Harry Peoples, in the above-styled cause.

2. In accordance with Supreme Court Rule 28.2, this affidavit is being filed to show that, in compliance with Rule 22.1, Respondent's Brief in Opposition to the Petition for Writ of Certiorari to the United States Eleventh Circuit Court of Appeals is being filed as directed by the Clerk of the United States Supreme court on or before November 10, 1986.

3. At approximately 11:00 a.m. on November 7, 1986, I personally placed the original of the Respondent's Brief in Opposition in the United States Mail, properly addressed, and with first class postage affixed thereon.

Margaret L. Givhan

MARGARET L. GIVHAN
AFFIANT
ATTORNEY FOR RESPONDENT

SWORN to and SUBSCRIBED before me this 7th day of November, 1986.

Kathy M Hornberger

NOTARY PUBLIC-STATE AT LARGE

My Commission expires: 1-1-89